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No. A-559
IN THE

Supreme Court of the United States

October Term, 1982

CITY OF TORRANCE,

Appellant,

vs.

WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; STATE COMPENSATION INSURANCE FUND,

Appellees.

On Appeal From the Supreme Court of the State of California.

BRIEF OF AMICUS CURIAE, INDUSTRIAL INDEMNITY COMPANY, ON BEHALF OF APPELLEE STATE COMPENSATION INSURANCE FUND.

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Question Presented.

HAS THE CALIFORNIA LEGISLATURE CONSTITUTIONALLY LIMITED THE EXPOSURE PERIODS OF OCCUPATIONAL DISEASE CLAIMS?

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~~MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND~~ BRIEF OF AMICUS CURIAE, INDUSTRIAL INDEMNITY COMPANY, ON BEHALF OF APPELLEE STATE COMPENSATION INSURANCE FUND.

Industrial Indemnity Company, a California Corporation licensed to engage in the insurance business, having secured the consent of the real parties in interest, moves for leave to file Brief Amicus Curiae, on behalf of the State Compensation Insurance Fund in support of its motion to dismiss the appeal of the City of Torrance and to affirm the decision of the Supreme Court of the State of California.

Interest of Amicus Curiae.

Industrial Indemnity Company, as a major underwriter of workers' compensation insurance, extending such protection to the employees of many major commercial insureds

within the State of California, has been a responsive and responsible force in the development and evolution of the workers' compensation laws of that State. Along with many others, Industrial Indemnity Company supported legislation which in 1977 amended the workers' compensation laws of California. The City of Torrance seeks to invalidate a part of that legislation on the grounds that it unconstitutionally impairs its contracts of workers' compensation insurance extending from the State Compensation Insurance Fund. The Supreme Court of California has rejected that contention and upheld the legislation in question. Industrial Indemnity Company is concerned that unless the decision of the court and the constitutionality of the legislation is upheld, that the continuation of the workers' compensation program and its ability to provide prompt and full compensation benefits to the workers of California will be in jeopardy.

ARGUMENT.

I.

Constitutional Mandate.

The authority to create and enforce a complete system of workers' compensation is contained in Article XIV, Section 4 of the State Constitution.[1] It imposes upon the legislature the responsibility of enacting statutes which implement the declared social and public policy of the State concerning the health, safety and well-being of the work force.

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[1]California Constitution, Art. XIV, §4.

> The legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a state compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government. . . .

In compliance with the constitutional mandate and consistent with changing theories of compensability, changing economic circumstance and even changing moral concepts, the legislature has amended, added and deleted Sections of the Workers' Compensation Insurance Safety Act since its passage in 1917. This evolution of the workers' compensation law represents a proper exercise of the State's police power. Legislation has extended to the establishment of rules regarding compensability, definitions of injury, dates of injury, dependency and contribution among parties. Historically, constitutional challenges to this vital system of workers' compensation have been answered by reference to this constitutional mandate and the State's police power. Consequently, the growth of this body of legislation, so basically founded, now represents a social system affecting the entire working community of California.

The concept of occupational disease as a compensable entity was recognized by the California legislature in 1951 by the enactment of Labor Code Section 5500.5. It was the purpose and intent of the legislature to develop procedures which facilitated recovery for disabilities due to progressive diseases. An injured employee was permitted thereby to elect to proceed against one or more successive employers or insurance carriers for the entire consequence of his occupational disease even though that particular employment was not the sole cause of the disability. Those held liable would have the burden of seeking and securing contribution.

Attacks against Labor Code Section 5500.5 on constitutional grounds were rejected by the Court in *Pacific Employers Insurance Company v. Industrial Accident Commission* (1963) 219 Cal.App.2d 634, 643, 33 Cal.Rptr. 422.

> The problem with which the legislature was concerned here was no perfect solution. It is a situation where the entity properly chargeable cannot be reached. Either

> the injured employee must go uncompensated, or someone else must "pick up the tab" — either the public, the industry as a whole, or those solvent members of it who participated in causing the disability. The legislature has selected the last alternative, we believe it acted reasonably . . .

Although Section 5500.5 referred expressly to occupational disease claims, its procedures were adopted to permit recovery for the consequences of continuing effort, stresses or series of micro-traumas. This emerging new theory of injury was subsequently designated as cumulative trauma. As a result of procedurally combining occupational disease and continuing trauma claims within the framework of Labor Code Section 5500.5 the required joinder of all employers and insurance carriers created a logistical quagmire of courtrooms full-to-bursting with litigants. The procedural nightmares, inordinate delays and excessive costs associated with such litigation were obstructing the constitutional mandate for the accomplishment of substantial justice expeditiously, inexpensively, and without encumbrance of any character.

Reacting to this situation, the California legislature in 1973 amended Labor Code Section 5500.5, limiting to five years the exposure periods for occupational disease and cumulative trauma claims except in instances involving injurious exposure with a single employer which extended beyond five years. The result of the legislation was to reduce the number of employers and carriers against whom compensation could be sought while maintaining the same level of benefits. In upholding the application of this amendment to injuries occurring before its effective date, the Court in *Harrison v. Workers' Compensation Appeals Board* (1974) 44 Cal.App.3d 197, 118 Cal.Rptr. 508 observed that California was now brought into line with most modern State and Federal workers' compensation systems by limiting the

exposure period for such claims. (4 Larson, Workers' Compensation Law, Sections 95.12, 95.21, 95.25); *Travelers Insurance Company v. Cardillo* (1955) (2d Circuit) 225 F.2d 113, *cert. denied*, 350 U.S. 913; *General Dynamics Corp. v. Benefits Review Board* (1977) 265 F.2d 208; *Cordero v. Triple A Machine Shop* (1978) (9th Circuit) 580 F.2d 1131 (U.S. Supreme Court denied certiorari on February 21, 1979, 47 Law Week. 3554).

In 1977, Section 5500.5 was once more amended to reduce the five year period of liability to a one year period by 1981 as well as eliminating the single employer exception.[2]

The Supreme Court of the State of California in *Flesher v. WCAB* (1979) 23 Cal.3d 322 discussed the legislative purpose for the 1973 and 1977 amendments and referred to the legislative history. (Report of *Workers' Compensation Sub-Committee Interim Hearings on the subject of reforming California Workers' Compensation laws*, Assembly Committee on Finance, Insurance and Commerce, Fall 1977, pp. 8-9, 55-56.) The court was satisfied that the purposes of the amendments were to provide greater certainty to insurers in anticipating costs and to permit the establishment of necessary reserves, to simplify proceedings by reducing the number of employers and insureds required to be joined as defendants, and to reduce the burden placed upon the entire system by the former procedures.

All segments of the workers' compensation community, including legally uninsured public agenices such as Appellant City, participated or were actively represented in the

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[2]The "single-employer exception" of Labor Code Section 5500.5(d) was not enacted until 1973, long after the effective years of the insurance policies in issue. By its terms this exception was temporary only and scheduled to expire on July 1, 1986.

legislative process which culminated in the amendments of 1973 and 1977. The process involved many months of thorough debate during which time no sound reason was advanced for retaining the single employer exception.

On the contrary, by eliminating the single employer exception and imposing liability upon current employers and carriers, employment safety is promoted by motivating employers to correct continuing hazardous and unsafe conditions. The amendment reflects the State's abiding concern for the health and well-being of its employees. Only current employers have the opportunity to promote safety and to develop safer methods of production. It is only by imposing liability upon the most recent injurious employment exposure that an awareness of unsafe conditions is created and safer work places established. Consequently, the goal of providing a safe place of employment as the announced social and public policy of the State is both promoted and achieved by these amendments.

As the cost of industrial disease and cumulative trauma is transferred into the cost of doing business and its products, both the employer and the purchasing public have the option to direct their energies and purchasing power toward safer and, therefore, less expensive production. This internalization of the cost of injury into product prices is promoted by the very amendments complained of by Appellant City. There is a general benefit to society as a whole by imposing a monetary incentive which itself produces an efficient internalization of the costs of injury. (*Workers' Compensation and Internalization of Social Costs: The Case of California*. Contained in the *Background Notes for Workers' Compensation Sub-Committee Interim Hearing on the subject of reforming California Workers' Compensation laws*, Assembly Committee on Finance, Insurance and Commerce, Fall 1977, p. 41.)

II.
No Contract Impairment.

California Insurance Code Sections 11650 through 11656 establish the essential provisions contained in every California compensation insurance policy. The primary obligation of the insurer is to either pay promptly and directly to the injured employee or to indemnify the insured employer pursuant to an entitlement or liability imposed or established under the workers' compensation laws of the State. Those laws then become a part of the insurance contract and establish the basic obligation of the Insurer. (*Argonaut Mining Company v. I.A.C.* (1951) 104 Cal.App.2d 27, 230 P.2d 637; 55 Cal.Jur.2d, Workers' Compensation, Section 7, p. 20; 81 Am.Jur.2d, Workers' Compensation, Section 13, p. 713.) That obligation, modified only by the ever changing compensation laws of the State, continues and nothing contained in the 1977 amendments to Labor Code Section 5500.5 alters or changes it. This was the conclusion of the California Supreme Court. (*City of Torrance v. W.C.A.B. (Atkinson)*, 32 Cal.3d 371, 185 Cal.Rptr. 645.)

As stated by the Court in *In Re Walton* (1972) 28 Cal.App.3d 108, 104 Cal.Rptr. 472:

> When persons enter into a contract or transaction creating a relationship infused with a substantial public interest, subject to plenary control by the State, such contract or transaction is deemed to incorporate and contemplate not only the existing law but the reserve power of the State to amend the law or enact additional laws for the public good and in pursuance of public policy, and such legislative amendments or enactments do not constitute an unconstitutional impairment of contractual obligations. *Home Building and Loan Association v. Blaisdell*, 209 U.S. 398, 434-438, 54 S.Ct.

208, 231, 78 L. Ed. 413, 426-429; *Castleman v. Scudder* (1947) 81 Cal.App.2d 737, 740, 185 P.2d 35; *Phelps v. Prussia* (1943) 60 Cal.App.2d 732, 741, 141 P.2d 440; *State, etc. Bur. v. Pomona, etc. Assn.*, 37 Cal.2d (Supp.) 765, 768-770, 98 P.2d 829.

Although Appellant City characterizes the effect of the 1977 legislation as a total abrogation of vested contract rights,[3] the obligations of the prior contracts remain in effect and where the injurious exposure to occupational disease or continuing trauma is confined to the period of coverage, the policies of insurance apply and the obligations continue. Again, the amendment complained of, namely the elimination of the single-employer exception, represented but a portion of the legislative intent to remedy the problems created by increased filing of such claims. By far, the most significant effect of the 1977 amendment was to reduce the liability period for occupational disease and continuing trauma claims to one year. This major change is apparently acceptable to Appellant City.

Appellant City further compounds the illusion of impairment by referring to its supposed economic disadvantage. However, Appellant City's decision to become legally uninsured was based on economic considerations and an awareness that the workers' compensation law could and would change. The City chose to bear the monetary risks created by its legally uninsured status. The imposition of liability herein is not the result of the 1977 amendment but the consequence of self-insurance.

In fact, at oral argument (*City of Torrance v. WCAB, supra* at p. 379), Appellant City agreed that it was the parties' intention to incorporate subsequent changes of law

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[3]At no time were the contracts of insurance entered into the evidentiary record.

in their insurance agreements. Only by such incorporation can the employer's obligation remain fully insured as required by law. Only by such incorporation can the State guarantee that prior policies of insurance will continue to provide complete coverage for future compensation benefits. The concept of a vital responsible system of workers' compensation, able to respond and provide needed protection to the workers of the State, requires that private contracts of insurance incorporate changes in the law. The repeal of the single-employer exception, although reducing the opportunity to seek contribution, in no way increased the liability of Appellant City for injurious exposures during periods covered by the State Fund. Rather, that code section imposed liability upon the last year of injurious exposure, whenever found.

III.
Reasonable Exercise of Police Power.

Appellant City has not demonstrated a contractual impairment but rather is expressing dissatisfaction with the legislative process. The basic issue is not whether a contract is affected by statute but whether the legislation is directed toward a legitimate goal and are the measures taken reasonably and appropriately directed to that end. In every case the question is whether the statute is within or without the legitimate purview and scope of the State's police power. If it is reasonable and does have a substantial relation to a legitimate object to be accomplished, then modification or revocation of contracts is permitted as a legitimate exercise of police power. Certainly the purposes of the amendments in both 1973 and 1977 as stated in *Flesher, supra*, represent reasonable and appropriate efforts towards achieving a constitutionally mandated goal, efforts in which Appellant City, self-insureds and insurers all participated. The fact that in

an isolated instance the proper exercise of police power may result in economic disadvantage is again a risk that the Appellant City assumed when it knowingly chose to be legally uninsured.

It is difficult to conceive of any amendments to the workers' compensation law affecting either procedures or substantive rights which will not have an impact upon the liability of the parties within the system. The sole issue therefore is whether the amendment in reasonable fashion accomplishes a legitimate objective. The Appellant City's argument is not based upon the unreasonableness of the legislation but rather on its supposed economic advantage in maintaining the single-employer exception. However, the elimination of that exception is merely a continuation of the procedural reforms begun in 1973 as they apply to continuing trauma and occupational disease claims.

Despite unprecedented legislative activity throughout the country since the 1972 report by the National Commission on State Workers' Compensation laws (established by the Occupational Safety and Health Act of 1970), Appellant City has failed to cite one case where changes in procedures affecting workers' compensation liability were held to impair the obligation of insurance contracts. Rather, Appellant City has gone far afield in its search for citable support, attempting to analogize and compare the instant situation with laws effecting retirement pension plans, covenants funding port authority bonds, public employee salary provisions and the regulation of utilities. Not only is there lack of subject matter comparison but the very foundation for the legislation in these other cited cases lacks the expressed social and public policy and vested concern which the California Constitution mandates with respect to the workers' compensation system.

Appellant City would suggest that the only constitutional justification for legislative impairments of contract arise from emergency situations and that the solutions therefore must be of a temporary nature. However, to assume that these are the exclusive exceptions to justifiable legislative impairment ignores the obligation imposed on the California legislature to effect beneficial changes upon the workers' compensation system of either a permanent or long lasting nature. Where so mandated, a proper exercise of police power in support of an announced public policy neither depends upon the existence of an emergency nor need such exercise be of a limited or temporary nature.

Summary.

Authority to create and enforce a complete system of workers' compensation is established by the California Constitution. The legislature has continually responded to this mandate since it was established in 1917. As part of the continuing evolution of the workers' compensation system the legislature reformed the liability period for occupational disease claims in 1973 and again in 1977. The effect of these reforms was to reduce the period of liability to one year and to eliminate long term contribution for new disabilities. The compelling justification for these reforms is well documented in legislative history and in the Courts' analysis in *Harrison, Flesher* and *City of Torrance, supra.*

Appellant City chose to become legally uninsured in 1971 and, consequently, must bear liability for current claims. Although Appellant City asserts that the 1977 legislation impaired its earlier contracts of insurance with the State Compensation Insurance Fund, City has been unable to provide relevant case law or persuasive argument in support of its position. The California Supreme Court has deter-

mined that the parties to the insurance contracts herein contemplated and anticipated the incorporation of future changes in the workers' compensation law and that the 1977 amendment did not therefore serve to impair the contractual obligations. Appellant City has not demonstrated a contractual impairment but instead is expressing dissatisfaction with the legislative process in which it was fully represented.

Conclusion.

The Appeal should be dismissed and the decision of the California Supreme Court affirmed.

Respectfully submitted,

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and
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